ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 19 2017
CLERK, U.S. DISTRICT COURT
By RAN
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	
v.	No. 3:17-CR-
TERRY LYNN ANDERSON (01) ROCKY FREELAND ANDERSON (02)	3-17CR-222-M

INDICTMENT

The Grand Jury charges:

At all times material to this indictment:

General Allegations

Introduction

1. As set forth more fully below, the defendants, **Terry Lynn Anderson** and **Rocky Freeland Anderson**, together with others known and unknown to the grand jury, conspired to defraud, and did defraud, Blue Cross and Blue Shield of Texas (BCBS) by submitting, and causing to be submitted, claims for hearing aids that were: (a) not provided, (b) provided but medically unnecessary, and (c) predicated on fraudulent marketing practices. During and in relation to this health care fraud conspiracy, **Terry** and **Rocky** unlawfully used the means of identification of other persons.

The Health Care Benefit Program

2. BCBS was a private non-profit health insurance company in the State of Texas that provided health care benefits to individuals enrolled for coverage under

individual and employer-sponsored group plans. Individuals who received health care benefits through BCBS were referred to as "Subscribers."

3. BCBS was a "health care benefit program" as defined by 18 U.S.C. § 24(b), that affected commerce, and as that term is used in 18 U.S.C. § 1347.

Coverage of Hearing Aid Devices

4. Each individual and group insurance plan detailed the benefits available to Subscribers, ranging from inpatient services such as hospital care, outpatient services such as doctor's office visits, and durable medical equipment (DME) such as hearing aids. Each insurance plan specified, among other things, the amount of the Subscriber's copayment, coinsurance, and deductible for covered items and services.

5. BCBS administered group insurance plans on behalf of employees of American Airlines, Inc. and its subsidiary American Eagle Holding Corporation, (collectively "American Airlines"). From 2011 to 2013 the BCBS American Airlines insurance plans covered expenses for medically necessary hearing exams and up to one hearing aid for each ear per year. There was no maximum coverage limit for the cost of the hearing aids. In 2014, the hearing aid benefit in the BCBS American Airlines employee plans was changed to allow replacement hearing aids once every 36 months, and set a maximum allowable amount of $3,500 per hearing aid.

Claim Submission Process

6. Physicians and other health care providers, including suppliers of durable medical equipment, were able to contract with BCBS to become approved providers in the BCBS network. As part of the application process, each provider agreed to comply

with all BCBS regulations, medical policies, and provider manual guidelines. Providers also agreed that they "shall diligently pursue, and have responsibility for, collection of any applicable Copayments, Coinsurance or Deductible amount from Subscribers and shall in no event offer, publicize, or advertise any waiver or other reduction of any Copayment, Coinsurance or Deductible unless specifically authorized in writing by [BCBS]."

7. To obtain payment from BCBS, the provider or the provider's designee was required to submit claims, either electronically or on paper, to BCBS that included, among other things, the following information: the provider's National Provider Identifier (NPI) or unique BCBS provider number, the patient's name, the patient's diagnosis described by a standardized code, a description of the services and supplies provided to the Subscriber, the date and location the items and services were provided, and the amount claimed for payment. Paper claims are commonly submitted on forms known as "CMS 1500" or "1500" forms.

8. The National Uniform Claim Committee (NUCC) was a voluntary organization created to standardize the transmission of claims to health insurers. The NUCC was chaired by the American Medical Association and partnered with the Centers for Medicare and Medicaid Services. Among other things, the NUCC approves 1500 forms and publishes a 1500 claim form instruction manual. According to the NUCC instruction manual, the "Date of Service" field in the 1500 form is used to indicate the "actual month, day, and year the service(s) was provided."

9. For DME claims, BCBS expected the "Date of Service" in the claim form to reflect the date the item was dispensed to the Subscriber.

10. BCBS relied on providers to submit true, complete, and accurate claims.

State and Federal Regulations Governing Dispensing Hearing Aids

11. The licensure and regulation of hearing instrument fitters and dispensers in Texas was governed by the Texas Administrative Code and the Texas Occupations Code. Although the relevant section has been renumbered over time, at all times relevant to this indictment, the Texas Administrative Code required all licensed fitters and dispensers of hearing instruments to comply with the Federal Food and Drug Administration (FDA) regulations set forth in 21 C.F.R. § 801.420 and § 801.421.

12. Pursuant to 21 C.F.R. § 801.421, a hearing aid dispenser is not permitted to sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician that states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months. This requirement may not be waived by individuals under the age of 18. A prospective hearing aid user over the age of 18 may waive this medical evaluation requirement provided the hearing aid dispenser:

(a) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(b) Does not in any way actively encourage the prospective user to waive such a medical evaluation; and

(c) Affords the prospective user the opportunity to sign the following statement: "I have been advised by __________ (Hearing aid dispenser's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid."

13. Section 102.001 of the Texas Occupations Code prohibited licensed fitters and dispensers of hearing aids from "knowingly offer[ing] to pay … directly or indirectly, overtly or covertly any remuneration in cash or in kind to … another for securing … patronage."

Defendants

14. **Terry Lynn Anderson**, a resident of Dallas, Texas, was the President, owner, and co-operator of Anfree Incorporated, a Texas corporation that did business as Anderson Optical & Hearing Aids Center (Anderson Optical & Hearing). Anderson Optical & Hearing became an approved provider in the BCBS network on or about March 1, 2003. **Terry** was licensed by the State of Texas as a fitter and dispenser of hearing instruments (License No. 50126).

15. **Rocky Freeland Anderson**, a resident of Dallas, Texas, co-operated Anderson Optical & Hearing Aids with his father, **Terry**. **Rocky** was licensed by the State of Texas as a fitter and dispenser of hearing instruments (License No. 80352).

Count One
Conspiracy to Commit Health Care Fraud
(Violation of 18 U.S.C. § 1349 (18 U.S.C. § 1347))

16. Paragraphs 1 through 15 of this indictment are realleged and incorporated by reference as though fully set forth herein.

17. From on or around January 1, 2011, through on or around November 8, 2016, in the Dallas Division of the Northern District of Texas and elsewhere, the defendants, **Terry** and **Rocky**, did knowingly and willfully combine, conspire, confederate, and agree with each other and with others, known and unknown to the Grand Jury, to violate 18 U.S.C. § 1347, that is, to devise and to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in 18 U.S.C. § 24(b), that is, BCBS, and to obtain by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, BCBS, in connection with the delivery of, and payment for, health care benefits, items, and services, namely, hearing aids.

Purpose of the Conspiracy

18. It was a purpose of the conspiracy for the defendants and their coconspirators to unlawfully enrich themselves through the submission of claims to BCBS for hearing aids that were: (a) not delivered, (b) delivered but not medically necessary, and (c) predicated on fraudulent marketing practices, and to conceal those facts from BCBS, American Airlines, and the Texas Department of State Health Services (DSHS).

Manner and Means of the Conspiracy

19. The manner and means by which the defendants and their coconspirators sought to accomplish the purposes of the conspiracy included, among other things:

The Scheme to Defraud

20. The defendants and their coconspirators devised and executed a scheme to defraud BCBS by submitting claims for hearing aids that were not needed and, in many cases, not delivered to the BCBS Subscriber. To increase the number of claims they could submit to BCBS, the defendants and their coconspirators engaged in fraudulent marketing practices.

21. For example, the defendants promised BCBS subscribers a free pair of high-end sunglasses or a free pair of prescription eyeglasses in exchange for taking a free hearing test. At the conclusion of these hearing tests, the defendants told Subscribers that they had slight to mild hearing loss and required them to sign an order for hearing aids in order to receive the free sunglasses or prescription glasses.

22. As part of the scheme to defraud, and without written authorization from BCBS, the defendants and their coconspirators promised Subscribers that the hearing aids would be provided to them at no cost, and that Anderson Optical & Hearing would not require the Subscriber to pay any applicable copayment, coinsurance, or deductible.

23. The defendants offered BCBS subscribers $100 gift cards in exchange for referring family members and coworkers for free hearing tests.

24. The defendants took advantage of the BCBS American Airline plans and preyed on American Airline employees because prior to 2014, the American Airline

insurance plans administered by BCBS had no maximum limit on the cost of hearing aids and allowed Subscribers to obtain hearing aids once per plan year. In 2013, approximately 84.6% of Anderson Optical & Hearing's total income came from BCBS and 99.7% of the BCBS payments were based on claims submitted for American Airline employees and their dependents.

25. The defendants and their coconspirators used the bankruptcy of American Airline's parent company in 2011 to pressure BCBS subscribers to order hearing aids that were medically unnecessary. The defendants told some BCBS subscribers that, even though they did not have hearing loss, that they would likely develop it in the future, and that they should, therefore, order hearing aids while they had insurance coverage. The defendants and their coconspirators told Subscribers that, as a result of the bankruptcy, the Subscribers might lose their hearing aid benefit, either through reductions in insurance coverage or as a result of employee layoffs or terminations.

26. Contrary to State and Federal regulations governing dispensing hearing aids, the defendants and their coconspirators failed to adequately warn Subscribers that the FDA had determined that it would be in their best interest to have a medical evaluation by a licensed physician before purchasing hearing aids, which would have allowed Subscribers to rule out temporary causes of hearing loss such as ear infections and impacted earwax. The defendants and their coconspirators obtained written medical waivers from Subscribers over the age of 18 who did not know or understand what they were signing and dispensed hearing aids to Subscribers under the age of 18 who had not had the required (and un-waiveable) medical evaluation.

27. As part of the scheme to defraud, the defendants and their coconspirators failed to conduct hearing tests that complied with BCBS's medical policies related to the evaluation of hearing impairment. For example, many of the hearing tests were conducted in an employee break room at DFW Airport and lasted less than five minutes.

28. The defendants and their conspirators submitted claims to BCBS for reimbursement for hearing aids using paper 1500 forms that had been approved by the NUCC. The forms, stated that the "NUCC Instruction Manual [is] available at www.nucc.org." The defendants and their conspirators submitted claims to BCBS before dispensing hearing aids to the Subscriber, and in some cases for hearing aids that they never delivered to the Subscriber. The defendants kept lists of Subscribers who had not received hearing aids despite BCBS having paid the claims. One such list contained 103 names and was titled, "AA – Paid but NOT Dispensed and EOB dates."

Concealment and Cover-up

29. To conceal the fraud, the defendants and their coconspirators falsified patient records, forged patient signatures, and attempted to dispense hearing aids and collect deductibles and coinsurance years after the Subscriber was offered a free hearing test and free hearing aids.

30. In November 2013, BCBS conducted an audit of Anderson Optical & Hearing and requested copies of patient records for certain American Airline employees and their dependents. On or about January 6, 2014, the Texas Department of State Health Services-Professional Licensing Unit (Professional Licensing Unit) conducted an investigation regarding a complaint it had received concerning **Terry** and **Rocky**. In

February 2014, when given the opportunity to respond to the complaint, the defendants and their coconspirators submitted several patient records to the Professional Licensing Unit, including some of the same patient records that had been collected by BCBS. The patient records submitted to the Professional Licensing Unit had altered test scores, additional notations, and apparent forged signatures that were not present when the same records were submitted to BCBS in November 2013. On or about November 8, 2016, the successor to the Professional Licensing Unit, the Texas Department of Licensing and Regulation, closed its investigation of **Terry** and **Rocky**.

31. In 2015, the defendants and their coconspirators mailed hearing aids to Subscribers who had received a hearing test and free sunglasses or prescriptions glasses in 2013, but who had not picked up their hearing aids. The shipped hearing aids included a form letter from **Terry** acknowledging that the hearing aids had not been dispensed, stating, "We have tried many times to arrange an appointment with you to finish the dispensing of your hearing aids. ... Please understand the following-these aids are not ready for you to wear. They are not being dispensed by mail to you. You will need to contact one of our offices for an appointment to be properly dispensed."

32. In 2015, the defendants and their coconspirators sent letters to Subscribers attempting to collect coinsurance and deductible amounts from Subscribers who were promised hearing aids at no cost in 2013. These form letters falsely stated that the attempt to collect these amounts was based on "changes in insurance provider policies." When one Subscriber, B.M., complained about receiving a bill on May 20, 2015, for $918.88 two years after he was promised free hearing aids, **Terry** falsely responded, "We

did not know that we were to inform you of your employee share. … Because this is a hardship to you, please just fill out the hardship form and return it to us. We will do nothing more with this matter."

Effect on American Airlines & BCBS

33. Beginning in January 2011 and continuing through January 2014, Anderson Optical & Hearing submitted claims to BCBS for hearing aids on behalf of American Airlines employees totaling more than $27 million, the vast majority of which were fraudulent. As a result of these claims, BCBS paid Anderson Optical & Hearing more than $16.7 million.

34. Had American Airlines and BCBS been aware that Anderson Optical & Hearing was submitting claims for hearing aids that were not dispensed, not medically necessary, and premised on the marketing practices described above, BCBS would have denied the claims.

All in violation of 18 U.S.C. § 1349 (18 U.S.C. § 1347).

Counts Two through Eleven
Health Care Fraud and Aiding and Abetting
(Violations of 18 U.S.C. §§ 1347 and 2)

35. Paragraphs 1 through 34 of this indictment are realleged and incorporated by reference as though fully set forth herein.

36. On or about the dates specified below, in the Dallas Division of the Northern District of Texas, and elsewhere, defendants **Terry** and **Rocky,** in connection with the delivery of, and payment for, health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud BCBS, a health care benefit program affecting commerce, as defined by 18 U.S.C. § 24(b), and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of BCBS, that is, the defendants submitted, and aided and abetted in submitting, false and fraudulent claims to BCBS, seeking reimbursement for the cost of hearing aids that were not delivered and hearing aids that were not medically necessary, each claim submitted to BCBS being a separate count:

Count	BCBS Claim Number	BCBS Subscriber	Date of Service	Amount Submitted	Amount Paid
2	201236104074020C	R.A.	12/17/2012	$11,200.00	$7,616.00
3	201304203061730C	M.S.	02/01/2013	$13,900.00	$11,120.00
4	201306303082690C	R.P.	02/15/2013	$13,900.00	$8,370.00
5	201314403015140C	G.S.	05/20/2013	$13,900.00	$8,823.05
6	201317512046720C	S.C.	06/14/2013	$13,900.00	$8,527.88
7	201318604019200C	C.F.	06/18/2013	$13,990.00	$8,485.14

8	201321004001840C	G.P.	07/01/2013	$13,990.00	$4,430.74
9	201323804008750C	R.E.	07/17/2013	$13,990.00	$4,670.74
10	201325912000610C	M.V.	08/26/2013	$10,990.00	$4,430.74
11	201326803046530C	J.K.	09/18/2013	$10,990.00	$4,430.74

Each in violation of 18 U.S.C. §§ 1347 and 2.

Counts Twelve through Fifteen
Aggravated Identity Theft and Aiding and Abetting
(Violation 18 U.S.C. §§ 1028A and 2)

37. Paragraphs 1 through 36 of this indictment are realleged and incorporated by reference as though fully set forth herein.

38. On or about the dates specified below, in the Dallas Division of the Northern District of Texas, and elsewhere, the defendants, **Terry** and **Rocky**, aided and abetted by others, and aiding and abetting others, did knowingly transfer, possess, and use, without lawful authority, a means of identification of another person during and in relation to violations of 18 U.S.C. § 1347, Health Care Fraud, knowing that the means of identification belonged to actual persons, by possessing, transferring, and using the names, BCBS Subscriber information, and other means of identification other persons, that is BCBS Subscribers, to obtain payment for health care services and items that were not provided, each transfer, possession, and use being a separate Count:

Count	BCBS Claim Number	BCBS Subscriber	Date of Service	Amount Submitted	Amount Paid
12	201227503003400C	C.R.	09/27/2012	$11,200.00	$7,616.00
13	201303904083250C	T.W.	01/14/2013	$11,200.00	$8,960.00
14	201326803046510C	B.C.	09/18/2013	$10,990.00	$4,430.74
15	201331012002940C	G.R.	10/24/2013	$13,900.00	$4,430.74

Each in violation of 18 U.S.C. §§ 1028A(a)(1) and 2.

Forfeiture Notice
(18 U.S.C. § 982(a)(7), 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c))

39. Paragraphs 1 through 38 of this indictment are realleged and incorporated by reference as though fully set forth herein.

40. Pursuant to 18 U.S.C. § 982(a)(7), 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c), upon conviction for any of the offenses charged in Count One through Eleven of the indictment, the defendants, **Terry Lynn Anderson** and **Rocky Freeland Anderson**, shall forfeit to the United States of America any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses.

41. The property to be forfeited includes, but is not limited to, the following:

Money Judgment

a) The proceeds from the offenses alleged in Counts One through Eleven, in the form of a money judgment from all defendants.

Real Property

b) Real Property located at 802 CR 3375, Valley Mills, Texas, more particularly described as Tract I: all that certain 286.95-acre tract of land in the Pedro Lopez Survey, A-473, in Bosque County, Texas, and Tract II: all that certain 16.5-acre tract of land being part of the Pedro Lopez Survey Lying on North Bosque River, in Bosque County Texas, including all buildings, appurtenances, and improvements located thereon.

Vehicles

c) 2008 Hummer H2, VIN 5GRGN23818H108880, seized on December 9, 2015;

d) 2013 Mercedes SL550, VIN WDDJK7DAXDF010196, seized December 9, 2015;

e) 2012 Ford F250 Truck, VIN 1FT7W2BT4CEB14932, seized December 11, 2015;

Financial Accounts

f) $2,134,263.04 in United States currency seized from Winsue Enterprise Holdings, LLC's JPMC bank account no. xxxxxx4006 on December 9, 2015;

g) $524,166.81 in United States currency seized from Winfree Legacy Holdings, LLC's Merrill Lynch Bank Account no. xxxxxx3068 on December 9, 2015;

h) $266,030.58 in United States currency seized from Winsue Enterprise Holdings, LLC's JPMC account no. xxxxxx4475 on December 9, 2015;

i) $72,565.40 in United States currency seized from Anfree, Inc. d/b/a Anderson Optical Co.'s JPMC bank account no. xxxxxx3566 on December 9, 2105;

j) $67,822.02 in United States currency seized from Prudential PruLife UL Protector Insurance Policy no. xxxx9810 in the name of Terry L. Anderson on December 9, 2015;

k) $45,898.50 in United States currency seized from Anfree Inc. d/b/a Anderson Optical Co.'s JPMC bank account no. xxxxxx0248 on December 9, 2015;

l) $36,511.70 in United States currency seized from Terry or Winny Anderson's JPMC bank account no. xxxxxx4390 on December 9, 2015;

m) $24,894.45 in United States currency seized from Anfree, Inc. d/b/a Anderson Optical Co.'s JPMC bank account no. xxxxxx4612 on December 9, 2015; and

n) $6,992.91 in United States currency seized from Terry or Winny Anderson's JPMC bank account no. xxxxxx2325 on December 9, 2015.

Substitute Assets

42. Pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C § 982(b)(1) and 28 U.S.C. § 2461(c), if any of the above-described property subject to forfeiture, as a result of any act or omission of the defendant, cannot be located upon the exercise of due

A TRUE BILL.

FOREPERSON

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE UNITED STATES OF AMERICA

v.

TERRY LYNN ANDERSON (1)
ROCKY FREELAND ANDERSON (2)

INDICTMENT

18 U.S.C. §§ 1349
Conspiracy to Commit Health Care Fraud

18 U.S.C. §§ 1347 and 2
Health Care Fraud and Aiding and Abetting

18 U.S.C. §§ 1028A and 2
Aggravated Identity Theft and Aiding and Abetting

18 U.S.C. § 982(a)(7)
Forfeiture Notice

15 Counts

A true bill rendered

DALLAS FOREPERSON

Filed in open court this ~~18~~ 19th day of April, 2017.

Arrest Warrant to be Issued

UNITED STATES MAGISTRATE JUDGE
No Criminal Matter Pending